

1 UNITED STATES DISTRICT COURT
 2 DISTRICT OF NEVADA
 3 BEFORE THE HONORABLE HOWARD D. McKIBBEN, SENIOR DISTRICT JUDGE
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5 UNITED STATES OF AMERICA, : No. 3:16-cr-016-HDM-WGC-1
 6 :
 7 Plaintiff, :
 8 : February 8, 2017
 9 -vs- :
 10 :
 11 STEVEN EUGENE FORD; aka : United States District Court
 12 Job Ford; aka Eleazar : 400 S. Virginia Street
 13 Melchizedek, : Reno, Nevada 89501
 14 :
 15 Defendant. :
 16 _____ :

17
 18 **TRANSCRIPT OF SENTENCING**

19 A P P E A R A N C E S:

20 FOR THE GOVERNMENT: Brian Sullivan
 21 Assistant United States Attorney
 22 Reno, Nevada

23 FOR THE DEFENDANT: Dennis Cameron
 24 Attorney at Law
 25 Reno, Nevada

PROBATION OFFICER: Dan McCaw

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Reported by: KATHRYN M. FRENCH, RPR, CCR
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08:21:20 1 Reno, Nevada, Wednesday, February 8, 2017, 8:30 a.m.

08:21:21 2 ---OoO---

08:27:00 3

08:27:00 4 THE CLERK: This is the date and time set for
08:27:03 5 Sentencing in case number 3:16-cr-016-HDM-WGC, United States
08:27:09 6 of America versus Steven Eugene Ford.

08:27:16 7 Defendant is present in custody with counsel
08:27:23 8 Dennis Cameron.

08:27:25 9 Appearing on behalf of the government is
08:27:28 10 Brian Sullivan.

08:31:42 11 THE COURT: All right. Thank you.

08:31:42 12 As indicated, this is the time set for imposition
08:31:47 13 of judgment and sentence.

08:31:48 14 Is the government ready to proceed?

08:31:50 15 MR. SULLIVAN: Yes, we are.

08:31:51 16 THE COURT: Is the defense ready to proceed?

08:31:53 17 MR. CAMERON: Yes, Your Honor. Thank you.

08:31:54 18 THE COURT: I have received and considered the
08:31:56 19 Presentence Investigation Report. The parties have been
08:31:59 20 provided with a copy of the report. The defendant has been
08:32:02 21 provided with a copy of the report to review.

08:32:05 22 Are there any factual errors in the report that
08:32:07 23 either the government or the defense wishes to bring to my
08:32:10 24 attention?

08:32:10 25 MR. SULLIVAN: No, Your Honor.

08:32:11 1 MR. CAMERON: No, Your Honor.

08:32:12 2 THE COURT: And are there any disputes with
08:32:14 3 respect to the calculations under the Guidelines, other than
08:32:17 4 those that have been set forth in the Memorandum filed by the
08:32:20 5 defense in this case?

08:32:21 6 Does the government have any?

08:32:22 7 MR. SULLIVAN: No, Your Honor.

08:32:23 8 THE COURT: Does the defense have any additional
08:32:25 9 ones?

08:32:25 10 MR. CAMERON: Your Honor, I have -- it's
08:32:29 11 difficult to say. I reviewed the Guidelines again last night.
08:32:33 12 If we are to prevail on the issues that we brought into
08:32:37 13 contention through our objections, it appears that there
08:32:41 14 would also be a four-level reduction that would be available
08:32:44 15 for the defendant. So my final calculation was, if the
08:32:49 16 Court goes with us on the objections, the final Guideline
08:32:53 17 calculation would be 11 rather than 22. And I don't think I
08:32:57 18 put 11 in because I did not include the four-level reduction.

08:33:04 19 THE COURT: In connection -- how did you make
08:33:08 20 that calculation?

08:33:10 21 MR. CAMERON: Well, Your Honor, if the Court
08:33:13 22 were to find that there were not more than two -- there were
08:33:16 23 not threats against more than two victims -- in other words,
08:33:20 24 three or more victims, the last part of that Guideline
08:33:24 25 indicates, and I have it here, that there would be a

08:33:27 1 four-level reduction from a 12-level base offense. There
08:33:31 2 would, of course, be an additional three-level increase
08:33:34 3 because then it would be the three-level increase for threat
08:33:37 4 against the President of the United States, rather than the
08:33:39 5 six-level increase.

08:33:43 6 THE COURT: Oh, I see what you're talking about.
08:33:45 7 Right.

08:33:45 8 Well, I'll have to have argument on --

08:33:48 9 MR. CAMERON: Correct. I just wanted to let the
08:33:50 10 Court know that was the final calculation that I came out with
08:33:54 11 last night after going over it again.

08:33:56 12 THE COURT: All right. You may proceed on your
08:33:58 13 argument on behalf of the defense.

08:34:01 14 MR. CAMERON: Thank you. Do you want to hear
08:34:02 15 from me from the table or the podium?

08:34:04 16 THE COURT: Whatever is more convenient for you.
08:34:08 17 Either remain seated here --

08:34:09 18 MR. CAMERON: If the Court doesn't mind, I'll
08:34:11 19 remain seated. Thank you.

08:34:13 20 Your Honor, in our response to the defendant's -- or
08:34:16 21 to the government's -- I'm sorry.

08:34:19 22 In our Memorandum, and in the government's
08:34:23 23 Memorandum, there is a marked difference in the determination
08:34:27 24 of the Guidelines. The government is asking for the Court
08:34:31 25 to find that there were more than two victims in this case,

08:34:35 1 threats made against more than two people. What that
08:34:39 2 ultimately results in is a 500 percent increase in his
08:34:46 3 sentence at the low end of the Guidelines, in that the
08:34:50 4 calculation, without more than two threats, turns out to
08:34:56 5 be a level 11 with no criminal history, as opposed to
08:35:00 6 a level 22 with no criminal history, and that being a
08:35:03 7 recommendation at the low end of eight months, compared
08:35:06 8 to a recommendation of 41 months. Simply on the face of
08:35:10 9 it -- and I'll get into this more when I actually talk in
08:35:13 10 terms of variance -- that's a ridiculous result.

08:35:17 11 In this particular case, the defendant was convicted
08:35:24 12 of a threat against the President of the United States.
08:35:27 13 Clearly, the jury spoke in that area and he's guilty of that
08:35:32 14 offense. Under the Guidelines, that gets manipulated quite
08:35:36 15 a bit depending upon whether there were other threats.

08:35:39 16 It's interesting to note that he was acquitted
08:35:42 17 in the threat against the White House operator. And there was
08:35:46 18 only one theory advanced by the defense in defense of that
08:35:52 19 particular charge, and that was that all the threats in
08:35:56 20 the conversation were directed against the President of the
08:35:59 21 United States.

08:36:00 22 We articulated to the jury that he didn't know the
08:36:05 23 White House operator, had no idea she was going to answer the
08:36:07 24 phone. She did not have children -- where the President of
08:36:10 25 the United States did have children -- and that these threats

08:36:13 1 were gender neutral.

08:36:17 2 He had called the White House comment line, not to
08:36:21 3 threaten the person that answered the phone, but to threaten
08:36:23 4 the President of the United States. That's the theory we
08:36:27 5 advanced to the jury and the jury came back and found him
08:36:30 6 guilty of threatening the President of the United States,
08:36:33 7 and not guilty of threatening the White House operator.

08:36:36 8 The government quite correctly points out that the
08:36:39 9 Court can overlook that if he believes there's preponderance
08:36:41 10 of evidence that he also threatened the White House operator.
08:36:47 11 It's interesting to know that in the Revised Presentence
08:36:50 12 Report, the Division takes out the threat against the White
08:36:54 13 House operator because we've pointed out to them -- I've
08:36:57 14 pointed out to them in our objections that he was acquitted
08:37:00 15 of that charge. They did not seem to think there was a
08:37:03 16 preponderance of evidence because they took the White House
08:37:06 17 operator out of the allegations of additional threats. We ask
08:37:10 18 the Court to do the same thing, looking at the same argument
08:37:13 19 we made to the jury and the result of that argument.

08:37:15 20 The fact that the White House operator may have
08:37:20 21 thought the threats were against her is not a preponderance
08:37:23 22 of evidence because the threats are gender neutral, and the
08:37:28 23 results of the call was to threaten the President of the
08:37:30 24 United States.

08:37:34 25 The Court sat through the trial and heard the

08:37:37 1 arguments on that. The fact the government's opinion is
08:37:39 2 different, I don't think, really charges the factual scenario.
08:37:44 3 I don't think the White House operator counts as additional
08:37:48 4 threats. That doesn't necessarily answer the problem in
08:37:51 5 its entirety because the government is also alleging threats
08:37:54 6 against Hillary Clinton because I think there was a throw-down
08:37:58 7 thing, I wish she was dead, and against the FBI in a series
08:38:02 8 of unrelated calls that were made to the FBI, I believe, the
08:38:07 9 same day. But it doesn't indicate -- I believe they were made
08:38:11 10 before the call to the White House operator because that was
08:38:14 11 done in the dead of night.

08:38:16 12 My problem with that is that the same, the same
08:38:24 13 Guideline application that says, hey, you need to count up
08:38:28 14 these threats, and if there's more than two; i.e. three --
08:38:31 15 and they would still claim there was three because they have
08:38:34 16 Hillary Clinton and the FBI -- for the Court to discount
08:38:40 17 the White House operator, but the applications to that note
08:38:44 18 says "conduct that occurred prior to the offense must be
08:38:48 19 substantially and directly connected to the offense," under
08:38:52 20 this particular Guideline application. And the uncharged
08:38:58 21 threats with the FBI are not so connected, they have nothing
08:39:01 22 to do with the threat against the President of the United
08:39:04 23 States. They were made at a different times and they're not
08:39:06 24 charged. So, I think the Application Note negates that.

08:39:12 25 So even if the Court were to find that there was

08:39:15 1 some veiled threat against Hillary Clinton that was mentioned
08:39:20 2 in the call or the threat against the President, that would
08:39:22 3 still only leave two, and it wouldn't trigger the increase
08:39:26 4 that they're talking about.

08:39:29 5 So, that's our position regarding the two-level
08:39:32 6 increase for multiple threats. And as I've argued to the
08:39:38 7 Court already, because that triggers the absence of the
08:39:41 8 four-level reduction and increase of six levels rather than
08:39:44 9 three levels, because the Guidelines are quite clear that
08:39:48 10 the threat against the President of the United States is a
08:39:52 11 three-level increase. It's only a six-level increase because
08:39:55 12 they're finding multiple victims under the first application
08:40:00 13 where there has to be more than two. I think that really
08:40:05 14 leaves that in my client's favor because the uncharged conduct
08:40:11 15 has to be closer related to the offense that is charged and
08:40:15 16 it's simply not in this case.

08:40:16 17 I don't think I can make the same argument about
08:40:20 18 the Hillary Clinton threat, except that wasn't much of a
08:40:25 19 threat. I think he said, "I wish she was dead." It could
08:40:31 20 just be a desire rather than a threat but, even so, those
08:40:35 21 two, the threat against the President and the alleged threat
08:40:38 22 against Hillary Clinton, which is also uncharged, only leaves
08:40:41 23 them with two and they need more than two. I think they need
08:40:45 24 at least three.

08:40:46 25 So, if the Court discounts the FBI phone calls,

08:40:49 1 which are unrelated under the Application Note and should not
08:40:51 2 be considered, then I think that it shifts the calculation
08:40:57 3 back as I have described it to the Court.

08:40:58 4 THE COURT: But, you would concede there would
08:41:00 5 be three if the Court counts the one against the operator and
08:41:04 6 also the one against Hillary Clinton?

08:41:06 7 MR. CAMERON: No. If the Court counted -- if
08:41:08 8 it counted the one against the operator, and counted the one
08:41:11 9 against Hillary Clinton, then I think it's simple math. Those
08:41:16 10 are three threats.

08:41:17 11 THE COURT: Right.

08:41:18 12 MR. CAMERON: But, I feel strongly that there's
08:41:20 13 not a preponderance of evidence about the threat against the
08:41:24 14 White House operator. I think that was clearly decided by the
08:41:27 15 jury.

08:41:27 16 THE COURT: Well, she was -- it was decided --
08:41:30 17 the evidence was insufficient beyond a reasonable doubt, but
08:41:33 18 they didn't decide anything about a preponderance of the
08:41:36 19 evidence.

08:41:36 20 MR. CAMERON: No.

08:41:37 21 THE COURT: She was very, very, uh, disturbed by
08:41:41 22 that threat, I could tell, when she testified here. And he
08:41:45 23 did use the word "bitch" in connection with that --

08:41:47 24 MR. CAMERON: And I think --

08:41:48 25 THE COURT: -- directly with her.

08:41:51 1 MR. CAMERON: Yes. And I think we took
08:41:53 2 testimony from her, and at least another witness, one of
08:41:56 3 the agents, that that was a gender neutral term, especially
08:42:01 4 considering she had no children. He had no knowledge of her.
08:42:04 5 He had no beef against her. And, he had no reason to threaten
08:42:08 6 her. And if you look at it as a gender neutral statement,
08:42:12 7 those are all threats against the President of the United
08:42:14 8 States, and that's what the jury found.

08:42:20 9 THE COURT: All right. Go ahead.

08:42:23 10 MR. CAMERON: In regards to the increase for
08:42:25 11 obstruction of justice, this becomes a much dicier subject,
08:42:29 12 Your Honor. My recollection, and the Court sat through the
08:42:37 13 trial, is that I asked him if he remembered making the
08:42:40 14 threats.

08:42:40 15 THE COURT: Well, you're right on part of that.
08:42:42 16 I have -- I directed that I get a portion of the transcript
08:42:46 17 that dealt with this. And the part that is most troubling to
08:42:51 18 the Court is that, at the final portion of his examination on
08:42:54 19 the cross-examination, this is what was said exactly:

08:43:01 20 "On the night of the 1st, were you drunk or do you
08:43:01 21 remember?"

08:43:05 22 He says, "I do not remember" -- about making the
08:43:07 23 threats -- "I'm denying that. I have no knowledge of those
08:43:10 24 threats at all. I did not make those threats."

08:43:12 25 So, that's a specific denial.

08:43:15 1 Then at the end of the cross-examination, the
08:43:20 2 question was:

08:43:21 3 "So you deny that you made those threats?

08:43:24 4 "Answer: Yeah."

08:43:28 5 MR. CAMERON: Okay. Well, my response --

08:43:30 6 THE COURT: Actually, what he says is, "Yeah, I
08:43:32 7 sure am denying it."

08:43:35 8 So, I mean, that's a specific denial of the threats.

08:43:37 9 I would have agreed with you up to that point that the way
08:43:40 10 you phrased the questions and the way he responded to them,
08:43:43 11 it was more in the sense of he didn't have a recollection.
08:43:46 12 But on cross-examination, it was specifically asked and he
08:43:49 13 made those specific responses, which were not true.

08:43:53 14 MR. CAMERON: Well, one of the things the Court
08:43:55 15 has to do under the case law, when you're talking in terms of
08:44:00 16 perjury, is find that each element of perjury is fulfilled.
08:44:04 17 And the defendant did testify under oath, which is the first
08:44:08 18 element. We're not agreeing that the testimony was false,
08:44:13 19 and we're all agreeing on which statement was false. Because
08:44:16 20 I think what happened is he came up and made his testimony,
08:44:20 21 and that testimony was quite clear that he did not recall
08:44:23 22 making the threats. That testimony was bolstered by the fact
08:44:30 23 that he's got a fragile mental state. We went into great
08:44:35 24 length in our Sentencing Memorandum to point that out to the
08:44:38 25 Court, attaching the medical doctors reports and everything

08:44:41 1 else that centered around that particular night. He was
08:44:45 2 floridly psychotic the next morning, when he was picked up
08:44:50 3 for a week and put on Risperdal and other mental health
08:44:53 4 medications before he could be brought back to a point where
08:44:55 5 his thought was fluid, but tangential.

08:44:57 6 So I think it's -- that, coupled with the fact that
08:45:00 7 he had been drinking excessively that night, the fact that
08:45:03 8 the agents knew that he was rambling incoherently both on the
08:45:09 9 phone, which was described by the White House operator, and
08:45:12 10 on their observations of him during their interrogation, it's
08:45:17 11 quite possible that he did not remember, at the point in time
08:45:21 12 he testified, whether or not he had made the threats.

08:45:24 13 There is a difference between being cross-examined
08:45:28 14 and pushed by the prosecutor, where I think, if I understand
08:45:32 15 what the Court read me, he first, again, affirmed he did not
08:45:37 16 remember the threats. And then the prosecution pushed it and
08:45:41 17 stated, "Did you make the threats?" And he said no. And I
08:45:46 18 think the Court was reading that from the transcript.

08:45:49 19 But taking it in context, he did in fact indicate
08:45:51 20 that he didn't remember, both to me and to the prosecutor.
08:45:55 21 And I think he just switched gears and said, no, I didn't.
08:46:00 22 He may not have understood the question completely or he may
08:46:05 23 not have been able to answer it. He may have just gotten
08:46:08 24 angry again. I don't know what his mental state was.
08:46:11 25 But, the fourth element is that he acted willfully and

08:46:13 1 deliberately with the knowledge that the testimony was false.
08:46:16 2 And I don't think that that's proved by a preponderance of
08:46:18 3 evidence in the context of the questioning the Court just
08:46:22 4 read. It's clear what his testimony was. They wanted a
08:46:26 5 denial, is why they kept asking the question. And I think
08:46:32 6 that's really what the Court has to make a decision on.

08:46:35 7 What was the gist of his testimony? Did he get
08:46:37 8 confused? Did he get backed into a corner? Did he get angry?

08:46:42 9 What's the difference if say I don't remember three
08:46:45 10 times, and you say I didn't make it once? What's the gist of
08:46:48 11 the testimony at that point in time? Is that perjury or is
08:46:52 12 that just his answer to a question?

08:46:57 13 I don't think it meets the elements of perjury. I
08:47:00 14 don't think it's a case the government would bring and try to
08:47:03 15 prove. It's simply not there. His testimony was very clear.
08:47:07 16 It wasn't to confuse the jury. He testified I don't remember
08:47:11 17 and I think he had a good basis, good faith basis for making
08:47:15 18 that answer because he didn't remember. He was in an altered
08:47:20 19 mental state at the time this took place. That was our
08:47:23 20 position at the time, that was the position of the medical
08:47:26 21 records that we supplied the Court. He was drunk. It was
08:47:31 22 testified to by the agents. It was testified to by the
08:47:33 23 doctors that examined him the next day and took him into
08:47:36 24 protective custody. So, I don't think that's a really strong
08:47:40 25 argument for the government.

08:47:41 1 I understand the Court, and I appreciate the Court
08:47:44 2 taking the time to look at the testimony because I did not
08:47:47 3 remember that particular statement, so I thought that was a
08:47:50 4 fairly moot point. But, I don't think that's enough to change
08:47:54 5 the rulings that the Court should make on that particular
08:47:58 6 issue.

08:47:59 7 THE COURT: All right. Go ahead with anything
08:48:02 8 else you have.

08:48:02 9 MR. CAMERON: Your Honor, other than that, I
08:48:03 10 think those were the two areas we were objecting to as to the
08:48:09 11 Guideline calculations. We do have other arguments to make
08:48:12 12 by way of a variance when that time comes. But, I think
08:48:16 13 that --

08:48:16 14 THE COURT: Just go ahead and make all of your
08:48:18 15 arguments.

08:48:18 16 MR. CAMERON: Oh, okay.

08:48:20 17 THE COURT: That's fine.

08:48:20 18 MR. CAMERON: We'll go from there then, Your
08:48:20 19 Honor.

08:48:23 20 I am going to stand up. I'm tired of sitting down.

08:48:23 21 THE COURT: That's fine.

08:48:27 22 MR. CAMERON: Your Honor, in terms of variance
08:48:29 23 in this case, the Guidelines, as I pointed out, are not
08:48:35 24 binding on this court. What's binding on the Court is to
08:48:38 25 follow the Sentencing Statute. And in this particular case,

08:48:42 1 if we -- as we've pointed out, my client has been in custody
08:48:46 2 over 11 months. The base Guideline offense is 12 months --
08:48:53 3 I'm sorry. It's 8 to 14 months at a -- it's a level 12, which
08:49:01 4 is 10 to 16 months under the Guidelines.

08:49:05 5 The adding and subtracting of the other threats is
08:49:10 6 certainly not a reasonable way to decide this case. I don't
08:49:15 7 think any judge would ever say, hey, you should go five times
08:49:20 8 the sentence for an acquitted or uncharged conduct. And I
08:49:24 9 don't even think the Guidelines call for that, if the Court
08:49:27 10 in fact follows our interpretation of what they mean. But
08:49:32 11 even if the Court doesn't, the Guideline sentence arrived at
08:49:37 12 in this case is unrealistic and unreasonable. You don't
08:49:41 13 increase 500 percent for something that you, A, didn't do;
08:49:47 14 or, B, weren't charged with.

08:49:49 15 As I pointed out in my moving papers, this
08:49:52 16 particular defendant was living an unhappy existence, of what
08:49:58 17 could only be described as a hubble. He's a disabled veteran.
08:50:03 18 He would save his money once a month so he could drink himself
08:50:08 19 into a stupor. He had significant mental problems. In fact,
08:50:12 20 the very next day, he was diagnosed by psychiatrists as being
08:50:16 21 floridly psychotic. I don't think he changed much from that
08:50:21 22 evening to that morning, Your Honor.

08:50:22 23 He called in the middle of the night to the White
08:50:25 24 House comment line and he said "I hate the President. I want
08:50:31 25 him dead. I'll kill his children. I'm burn him. I'll hang

08:50:34 1 him." Whatever his threats were, were more of a deflection
08:50:38 2 from his own anger and unhappiness than they were a legitimate
08:50:42 3 threat against the President of the United States. The threat
08:50:45 4 was there, but there's no indication from anyone he ever
08:50:48 5 intended to act out on it, that he had the ability to act
08:50:52 6 out on it. He's 3,000 miles away. He doesn't even have a
08:50:56 7 car to put gas in. He doesn't have money to make a trip to
08:50:59 8 do anything. This was simply an individual lashing out
08:51:04 9 because he was drunk, because he was disoriented, and because
08:51:08 10 he was particularly unhappy with his own circumstances.

08:51:13 11 Now, that's a crime because he did call and he did
08:51:16 12 make the threats and the jury, rightfully, found that he was
08:51:19 13 guilty of that. But under the Sentencing Statute, we're
08:51:23 14 supposed to look at something that will give respect for law
08:51:27 15 enforcement -- respect for the law. I'm sorry. Not law
08:51:30 16 enforcement. He's done 11 months. He has lost everything
08:51:35 17 he owns. This man has, basically, the clothes that he
08:51:41 18 was booked with. He has no place to go. He's lost his
08:51:45 19 apartment -- although he indicates to me that they will
08:51:48 20 rent back to him once he gets a check from his disability.
08:51:51 21 He has no clothing. He has nothing in his name. Everything
08:51:55 22 else is gone. That's a pretty significant punishment for
08:52:01 23 being drunk, having mental impairments, and lashing out in
08:52:06 24 the middle of the night by calling the White House comment
08:52:09 25 line. He was making comments, in his own mind, but they were

08:52:14 1 threats because he was an angry, unhappy human being.

08:52:19 2 So, 11 months in custody, and five years probation,
08:52:23 3 as we have suggested, is not only a just punishment for this
08:52:27 4 crime, because the base offense is only 10 to 16 months
08:52:33 5 absent these enhancements that the Court is looking at under
08:52:36 6 the Guidelines, which we think are totally irrational.
08:52:40 7 And, that happens sometimes when you have a one size
08:52:45 8 fits all sentencing system. The Guidelines don't take into
08:52:50 9 consideration this man's circumstances. They don't take into
08:52:54 10 consideration the facts, the motivation, what caused this
08:52:58 11 crime. What they do is count up number of threats.

08:53:02 12 Well, we've addressed that with the Court already.
08:53:05 13 We don't think there's enough to trigger that. So if you're
08:53:08 14 really at a level 12, the 11 months he's already done
08:53:12 15 fulfills what the Guidelines directs. It's only the
08:53:15 16 additional sentencing that we think is unrealistic in this
08:53:19 17 case.

08:53:19 18 THE COURT: Well, how do you calculate paragraph
08:53:23 19 20 if the Court ultimately determines there should not be a
08:53:26 20 two-level increase on multiple threats?

08:53:29 21 MR. CAMERON: If there's not a two-level
08:53:31 22 increase on multiple threats, then that not only takes away
08:53:35 23 those two levels, because the Guideline applications say if
08:53:40 24 there's not that increase, there's a four-level decrease.
08:53:44 25 So, you go down four levels there. And then when you come

08:53:48 1 back to the threat against the President of the United States,
08:53:50 2 you use the specific Guideline that says there's a three-level
08:53:54 3 increase, not the second one that says there's a six-level
08:53:57 4 increase if there's multiple threats. So, whether or not
08:54:00 5 there's multiple threats really attacks on three levels.

08:54:05 6 THE COURT: What section of the Guideline
08:54:07 7 reduces it by four levels?

08:54:10 8 MR. CAMERON: Hold on, Your Honor. I'll pick
08:54:12 9 that up. It's in my --

08:54:13 10 THE COURT: Is that correct?

08:54:15 11 PROBATION OFFICER: We would disagree with
08:54:17 12 Mr. Cameron's position on that.

08:54:18 13 THE COURT: Yeah, there's been no memorandum
08:54:20 14 filed in connection with that. This is the first time I've
08:54:23 15 heard that.

08:54:23 16 MR. CAMERON: That's just because I looked at it
08:54:26 17 last night. It's number six.

08:54:26 18 PROBATION OFFICER: That is correct. You
08:54:27 19 are citing to case citations; however, it is not an automatic
08:54:33 20 reduction of four levels. There are two prongs to that
08:54:36 21 specific offense characteristic that the Court would be
08:54:38 22 required to make a finding that both prongs of that are met.

08:54:38 23 MR. CAMERON: And that would be --

08:54:42 24 PROBATION OFFICER: The first one is met because
08:54:43 25 the base offense level is not determined under A. The second

08:54:46 1 part of that requires the Court to make a finding that the
08:54:50 2 offense involved a single instance evidencing little or no
08:54:54 3 deliberation. It would require the Court to make that finding
08:54:57 4 in order for that four-level to apply.

08:55:01 5 MR. CAMERON: And I agree. I think this was
08:55:02 6 a single instance when he called up that night with little or
08:55:04 7 no deliberation. I think he was called because he was drunk
08:55:10 8 and it was a reflex action.

08:55:11 9 So, what I'm telling the Court is that could apply
08:55:15 10 as the four-level decrease.

08:55:18 11 THE COURT: What's the section on that Guideline
08:55:20 12 again? Could you just show me? Pull it out on yours and then
08:55:24 13 show it to me.

08:55:26 14 Go ahead, counsel.

08:55:26 15 PROBATION OFFICER: Do you want me to bring it
08:55:27 16 to Your Honor?

08:55:27 17 MR. CAMERON: I think it's 2A6.1 subsection 6.

08:55:56 18 THE COURT: Okay.

08:55:56 19 Yeah. Go ahead.

08:55:57 20 MR. CAMERON: And just to be absolutely clear,
08:55:59 21 even if the four-level reduction is not applied by the Court,
08:56:02 22 there would still be a three-level reduction if the two-level
08:56:05 23 increase for multiple threats wasn't found by the Court,
08:56:09 24 because that changes the Guideline back to a threat against
08:56:14 25 the President, which is a three-level increase, rather than a

08:56:17 1 multiple threats, which is a six-level increase.

08:56:22 2 THE COURT: Yes. Go ahead.

08:56:23 3 MR. CAMERON: Okay. Getting back away from
08:56:26 4 the Guidelines for just a second, Your Honor, and back to the
08:56:29 5 Sentencing Statute itself, one of the things the Sentencing
08:56:32 6 Statute calls out is medical help for the defendant. And if
08:56:39 7 you look at this case factually, that's the root cause of what
08:56:45 8 happened. That, coupled with his drinking and his general
08:56:48 9 unhappiness, the fact that he had a mental episode that night,
08:56:54 10 which was borne out by his being taken into custody the next
08:57:00 11 day by the Veterans Hospital, and being found Floridly
08:57:06 12 psychotic, and being brought back down with mental health
08:57:10 13 medication, to a point where he was still tangential, but he
08:57:12 14 could hold fluid thought, the very next day they kept him for
08:57:16 15 a week, Your Honor. That's really the essence of what needs
08:57:18 16 to be done in this case. If you want to stop recidivism from
08:57:22 17 this particular individual, then you treat him for the problem
08:57:25 18 that he has. That's called out for by the Sentencing Statute.
08:57:31 19 It works into what would be just punishment for this case;
08:57:36 20 the 11 months he's already done; the fact that he's lost
08:57:39 21 everything, the fact that -- that comports with a level 12,
08:57:43 22 that's the base offense for this particular crime. And, it
08:57:48 23 answers the root cause of the crime, Your Honor.

08:57:51 24 He will be on probation, if you follow our
08:57:55 25 recommendation, after having done over 11 months, which

08:57:58 1 is a significant sentence and certainly covers the other
08:58:01 2 aspects of the Guidelines, and it will be further reinforced
08:58:05 3 by five years of probation, which is available under the
08:58:08 4 statute in this case, on which he could have the requirement
08:58:14 5 to seek out mental health counseling through the VA; the
08:58:18 6 requirement to stay on whatever medications they direct him to
08:58:22 7 stay on.

08:58:23 8 I mean, the Court heard the testimony in this case;
08:58:28 9 that's what the basis of this threat was. It's been the
08:58:32 10 problem with this young man for a long time. He needs the
08:58:37 11 help and it addresses the other aspects of the Sentencing
08:58:41 12 Guidelines because it makes sure that it protects the public
08:58:44 13 because he's going to be getting the help that he needs.
08:58:47 14 When he was on that medication and he's being helped by the
08:58:51 15 doctors, he was okay to be released back into the public.
08:58:57 16 I don't think that it's -- and I'll be quite candid with the
08:59:03 17 Court. The things that he said were ugly and he's being
08:59:11 18 punished for that severely. Eleven months in custody; he's
08:59:15 19 lost everything he owns; he's under the specter of going to
08:59:19 20 prison for 51 months. But, he hasn't done anything but
08:59:25 21 rant. And there's a reason he's ranting, Your Honor. His
08:59:30 22 circumstances in life, for a disabled veteran to be saving
08:59:35 23 his money so he can get drunk once a month, and he just
08:59:39 24 had a breakdown. He wanted to vent. He was angry. And, he
08:59:44 25 deflected where a lot of people deflect. Well, it must be

08:59:48 1 the President's fault. He didn't say what he was angry at
08:59:51 2 the President for. He just called up and made these stupid
08:59:55 3 threats. He compounded it by calling the FBI earlier in an
08:59:59 4 unrelated incident; by calling the Kremlin in an unrelated
09:00:05 5 incident; by calling the CIA in an unrelated incident. He
09:00:09 6 didn't make threats to them. He had suggestions for them how
09:00:13 7 he was going to solve the problems of the world.

09:00:15 8 This man has no criminal history whatsoever, Your
09:00:19 9 Honor. This incident was, in my opinion at least, a mental
09:00:24 10 breakdown. I think that's borne out by the evaluations that
09:00:30 11 he gave. He's not crazy. He just sometimes, like all of
09:00:36 12 us, has it up to here (indicating) and he flipped out. But
09:00:40 13 what he did on that was make a phone call to the White House
09:00:44 14 comment line, and make a fool of himself and ruin his own
09:00:48 15 life by making these meaningless threats that nobody, nobody
09:00:52 16 believes he's ever going to act out on.

09:00:55 17 So, that's why we're asking the Court to consider
09:00:58 18 probation, especially in light of the over 11 months that
09:01:01 19 he's already done, and especially in the light of the fact
09:01:04 20 that there are differences of opinions on the Guideline
09:01:08 21 calculation. And if the Court were to follow the Guidelines
09:01:13 22 and increase his penalty over 500 percent based on acquitted
09:01:19 23 conduct and uncharged conduct, it doesn't follow the
09:01:26 24 Application Note saying it's substantially connected to
09:01:29 25 the instant offense, that would be too much, judge.

09:01:34 1 So, that's our position.

09:01:35 2 THE COURT: All right. Thank you.

09:01:36 3 Mr. Ford, is there anything you wish to say?

09:01:39 4 DEFENDANT FORD: Mercy, I guess --

09:01:40 5 THE COURT: You can just remain seated there.

09:01:42 6 That's fine.

09:01:43 7 DEFENDANT FORD: Just mercy.

09:01:47 8 THE COURT: Are you taking medication now?

09:01:49 9 DEFENDANT FORD: Uh, no, sir. Right now, I'm
09:01:52 10 not because the, the Washoe County Jail doesn't have me on
09:01:56 11 anything. Once I go back to the VA, they'll put me back on
09:02:00 12 all the medication, I guess.

09:02:01 13 THE COURT: Okay. Thank you.

09:02:02 14 Mr. Sullivan.

09:02:03 15 MR. SULLIVAN: Your Honor, I'll start with the
09:02:07 16 application of the Guidelines and the two sections that the
09:02:11 17 defendant has objected to the increases.

09:02:13 18 First of all, before I do that, I would state
09:02:16 19 that you are correct, Mr. Cameron's invocation of 2A6.1(b)(6)
09:02:26 20 is untimely. And I agree with the Probation Officer's
09:02:31 21 assessment, it doesn't apply. It is a two-prong approach, but
09:02:36 22 you have to meet everything that's stated therein, and nobody
09:02:39 23 has briefed this, and I would respectfully request the Court
09:02:43 24 not to consider that.

09:02:44 25 We have already submitted in our response to the

09:02:49 1 Sentencing Memo our reason why the two levels should apply
09:02:55 2 for more than two threats. As the Court has noted during
09:03:00 3 this hearing, if the Court considers just the calls -- and
09:03:04 4 there were two calls that he made to the White House, he
09:03:08 5 called back about 20 minutes later after the first call --
09:03:13 6 that there is threats against the President. There's threats
09:03:19 7 that he made directly to the White House operator. And then,
09:03:26 8 of course, against Hillary Clinton. There's three, as the
09:03:29 9 Court has indicated.

09:03:30 10 But this case, the fact --

09:03:34 11 THE COURT: Well, those, what you characterize
09:03:37 12 as a threat -- well, first of all, we clearly have a verdict
09:03:40 13 from the jury. That doesn't end the inquiry, but the jury
09:03:43 14 found him not guilty of the offense as to the operator.

09:03:47 15 MR. SULLIVAN: Right.

09:03:47 16 THE COURT: Clearly, that was a very unusual and
09:03:50 17 strange and amorphous type of statement that he made as far as
09:03:54 18 the operator is concerned.

09:03:56 19 MR. SULLIVAN: Well --

09:03:57 20 THE COURT: And as far as Secretary Clinton was
09:04:00 21 concerned too. I --

09:04:02 22 MR. SULLIVAN: I agree, Your Honor. And I --

09:04:04 23 THE COURT: -- it's not a direct threat to her,
09:04:06 24 it was just --

09:04:06 25 MR. SULLIVAN: Well, it was a direct threat to

09:04:08 1 her. I mean --

09:04:08 2 THE COURT: Well, and it --

09:04:08 3 MR. SULLIVAN: -- how do you get around, "I'm
09:04:10 4 going to kill you, bitch. I'm going to kill --"

09:04:13 5 THE COURT: No, he didn't say that about
09:04:14 6 Hillary Clinton.

09:04:16 7 MR. SULLIVAN: Oh, no, not about her. No.

09:04:19 8 But, my point is that this is not just a one shot
09:04:24 9 deal, you know. He persisted in calling the White House. And
09:04:28 10 the fact that he called the FBI on the same day, I think, is
09:04:35 11 relevant and is connected. He is lashing out against the
09:04:39 12 government in general. He makes some pretty graphic threats
09:04:44 13 that are outlined in the PSR. He called the FBI over 20,
09:04:50 14 20 times, and made various threats, including grade school
09:04:56 15 children, how he was going to fill up balloons with ammonia
09:05:00 16 and bleach, and he was going to ram a truck and kill all
09:05:04 17 these kids. They are very graphic threats. This is not
09:05:06 18 something that was of very little deliberation or just a
09:05:09 19 single instance. He is calling and calling and calling
09:05:15 20 numerous times on this date in question. And I think we've
09:05:21 21 laid out -- well, the Probation Officer has laid out in his
09:05:26 22 report the reason why the Court should increase his offense
09:05:29 23 level by two levels for making more than two threats.

09:05:34 24 As far as the obstruction goes, Your Honor, yes,
09:05:38 25 the jury did acquit him on the count against the White House

09:05:42 1 operator. As I've indicated in the government's response from
09:05:46 2 a case, we don't know why juries do things. We -- it's hard
09:05:51 3 to know why they do things. They maybe bought, as Mr. Cameron
09:05:58 4 said, his argument that, basically, all of his venom was
09:06:01 5 directed towards the President. But as I just stated, it's
09:06:05 6 very clear that he's threatening this woman. And, it's
09:06:09 7 very clear, under the law, that it doesn't matter that he
09:06:14 8 was acquitted. The Court can still consider that. And as a
09:06:18 9 matter of fact, as I've stated in the response, and stated
09:06:22 10 the statute says, there's nothing -- the Court can consider
09:06:25 11 anything when trying to fashion the appropriate sentence in
09:06:29 12 this particular case.

09:06:33 13 We -- and my recollection was along the lines of
09:06:38 14 what you stated earlier, Your Honor, that he very clearly
09:06:41 15 denied making those threats, even though two witnesses
09:06:46 16 during the trial, the case agent, who is seated here with me,
09:06:51 17 George Chertis, stated very, unequivocally, that he admitted
09:06:58 18 making those threats. He even admitted calling the FBI. He
09:07:01 19 wouldn't answer when asked about the specific threats. But,
09:07:05 20 not only did I have George -- I would have put all five
09:07:08 21 witnesses on, but I knew that after two, you probably would
09:07:11 22 have cut me off. But, there are three other witnesses that
09:07:14 23 would so testify, law enforcement officers, that he admitted
09:07:18 24 making those threats.

09:07:19 25 And, of course, who is the person that has a lot to

09:07:24 1 gain here by lying?

09:07:25 2 The defendant does, of course, by denying that he
09:07:28 3 did that.

09:07:30 4 And I think that the obstruction of justice does
09:07:32 5 apply. He's trying to wriggle out here. He has not accepted
09:07:37 6 responsibility at all. I don't see that anywhere in the PSR
09:07:41 7 where, you know what, this was really a stupid thing for me to
09:07:45 8 do. I'm sorry that I did this. I don't see any of that. I
09:07:48 9 didn't hear any of that from him just now. He's just begging
09:07:53 10 the Court for mercy.

09:07:56 11 And I think defense counsel's characterization that,
09:08:01 12 oh, well, this is a big 500 percent increase, well, that's
09:08:06 13 not what's going on here. The Probation Officer has very
09:08:10 14 carefully analyzed the Guidelines. We all know, of course,
09:08:14 15 they're not binding on the Court. But, it is -- the Court is
09:08:17 16 required to consider them, and I think they should be given
09:08:22 17 strong weight here because --

09:08:23 18 THE COURT: Well, I guess one of my major
09:08:26 19 concerns here is on paragraph 20, a six-level increase, when,
09:08:30 20 normally, it would be a three-level increase in connection
09:08:33 21 with a threat against a government officer; in this case, you
09:08:37 22 know, the President of the United States. I am having trouble
09:08:41 23 understanding why it's a six-level instead of a three-level
09:08:45 24 increase.

09:08:46 25 MR. SULLIVAN: Okay. You're looking at

09:08:48 1 paragraph 20, which refers to the -- I'm just trying to find
09:08:53 2 out which section of the Guidelines -- oh, 3A1.2(b). Well,
09:09:02 3 let me look at that, Your Honor.

09:09:03 4 THE COURT: What's the Department's rationale
09:09:05 5 on that?

09:09:06 6 PROBATION OFFICER: Your Honor, if the Court
09:09:07 7 would take a look at the Application Note 3A1.2, it directs
09:09:11 8 the Court to apply the greatest increase --

09:09:14 9 THE COURT: Yeah.

09:09:14 10 PROBATION OFFICER: -- under that. Without
09:09:16 11 checking my book, which --

09:09:19 12 THE COURT: Go ahead and take it here.

09:09:23 13 PROBATION OFFICER: Thank you.

09:09:38 14 THE COURT: I mean you have in this case,
09:09:39 15 essentially what it was, it was a threat against the
09:09:42 16 President, and then there were collateral statements made
09:09:44 17 that I think may well constitute threats. And I may well
09:09:47 18 find that there's an appropriate basis for the two-level
09:09:50 19 enhancement on that, both with respect to the statements
09:09:55 20 as to the FBI, grade school children, against Hillary Clinton,
09:10:03 21 and also the operator, certainly would be more than one
09:10:07 22 individual and more than the two that are required. But, it
09:10:12 23 seems to me it's Draconian then to also add six levels under
09:10:17 24 paragraph 20. I can see three because it was a threat against
09:10:25 25 a government officer, which is the President of the United

09:10:27 1 States, and that's what he was convicted of.

09:10:52 2 Go ahead with your arguments while we're doing
09:10:54 3 this.

09:10:54 4 MR. SULLIVAN: Okay. Well, my answer to that
09:10:56 5 question, Your Honor, with respect to 3A1.2 is that there
09:10:59 6 is an entire section of the Guidelines entitled, "Official
09:11:03 7 Victim." And what I think the Sentencing Commission had in
09:11:06 8 mind here is we need to increase the penalties where somebody
09:11:10 9 calls up and does something like this, and threatens and
09:11:15 10 interrupts the government. This is serious business.

09:11:18 11 THE COURT: Yeah, that's the three-level
09:11:20 12 increase.

09:11:20 13 MR. SULLIVAN: Right. But then you go down to
09:11:22 14 (b), and they say (a)(1) and (a)(2) apply, then raise it up to
09:11:26 15 six. And they do. And that's why the Probation Officer did
09:11:29 16 that.

09:11:29 17 THE COURT: And (a)(1) is what?

09:11:31 18 MR. SULLIVAN: (A)(1) is "if the victim was a
09:11:33 19 government officer or employee," which --

09:11:34 20 THE COURT: All right.

09:11:35 21 MR. SULLIVAN: -- the operator and President
09:11:38 22 are. And then (2), "the offense of conviction was motivated
09:11:43 23 by such status." It's, clearly, that it was. He not only
09:11:48 24 called twice, at least, to the off -- to the White House. He
09:11:52 25 also called other government agencies, specifically as we've

09:11:55 1 been talking about here, the FBI. He was really after the
09:12:01 2 government. So, I think it's clear that the Probation Officer
09:12:04 3 has correctly applied 3A1.2(a) and (b).

09:12:13 4 THE COURT: I think you would have to say this
09:12:14 5 is a fairly unusual case.

09:12:16 6 MR. SULLIVAN: Well, Your Honor, what concerns
09:12:18 7 me is what concerns the Probation Officer. You know, at the
09:12:23 8 end, when he is assessing what kind of recommendation he wants
09:12:27 9 to make to the Court based on everything that -- reviewing the
09:12:32 10 whole picture here, you know, based on the extremely graphic
09:12:36 11 nature -- you know, this wasn't just a threat, hey, I'm going
09:12:40 12 to kill you, and, uh, I don't like you, and I -- you're going
09:12:44 13 to be killed.

09:12:45 14 THE COURT: There, certainly, was no intent to
09:12:47 15 carry out the threat -- and that's not required -- but there
09:12:50 16 certainly isn't anything that satisfies me on that in this
09:12:55 17 case.

09:12:55 18 And the second, I suppose, mitigating factor is
09:12:58 19 the fact that he was under the influence of both drugs
09:13:01 20 and alcohol; and, he was hospitalized almost immediately
09:13:04 21 thereafter and not released for a week period of time because
09:13:10 22 of his mental aberration, the problems that he had with the
09:13:15 23 mental condition that he had.

09:13:17 24 MR. SULLIVAN: But --

09:13:17 25 THE COURT: And I understand all of that.

09:13:20 1 Certainly, he was not going to carry this threat out under
09:13:24 2 the circumstances in which he made these calls. On the other
09:13:29 3 hand, the Court is very troubled about something like this.
09:13:33 4 A person in that state, if he were in a position to carry
09:13:37 5 out the threat, might well do it, and the Court has to be very
09:13:40 6 concerned about that.

09:13:41 7 Go ahead.

09:13:43 8 MR. SULLIVAN: Well, and what I was going to
09:13:44 9 say, Your Honor, is this is not his first rodeo. He was
09:13:47 10 visited in 2010, as the Probation Officer has pointed out,
09:13:51 11 by the Secret Service for similar activity. He wasn't
09:13:54 12 arrested then, but, you know, when some federal agents come
09:13:59 13 out and talk to you about making noise about threatening the
09:14:02 14 President, you know, that should put the fear of God into
09:14:06 15 somebody. But, no. Later, he goes ahead and makes more
09:14:09 16 specific threats and he winds up getting charged.

09:14:12 17 But what is also concerning to the government
09:14:14 18 is, yes, he did self-admit himself the next day to the VA
09:14:20 19 hospital, the way I understand it. But at the very end,
09:14:23 20 when he's, when he's going to be released, he makes the
09:14:26 21 statement to the doctors that he, well, I guess I'm going to
09:14:31 22 continue harassing the government, but I'll take it down a
09:14:35 23 couple of notches.

09:14:37 24 So, I mean, he's not repentant. He's not sorry.
09:14:40 25 Oh, my gosh, what did I do? And like I said earlier, even

09:14:44 1 during this proceeding, during this trial, and during this
09:14:46 2 sentencing proceeding, he's not coming in with any type of
09:14:49 3 remorse for what he did, accepting responsibility for what he
09:14:53 4 did.

09:14:53 5 For all of the reasons that the Probation Officer
09:14:55 6 has put in his PSR, I think we need to incapacitate this
09:15:00 7 defendant and give him the 51 months that the Probation
09:15:04 8 Officer is recommending. Maybe while he's in prison, maybe
09:15:08 9 he will think about this and it will remind him that, you
09:15:12 10 know, even if you're feeling down and out, you can't just
09:15:15 11 call up a bunch of federal agencies, including the White
09:15:19 12 House, and threaten to kill them.

09:15:21 13 Thank you.

09:15:21 14 THE COURT: Okay. Thank you.

09:15:25 15 Do you have any --

09:15:25 16 PROBATION OFFICER: Your Honor --

09:15:25 17 THE COURT: Yes. I'm sorry. Go ahead.

09:15:27 18 PROBATION OFFICER: -- just to clarify on the
09:15:29 19 six-level increase, it is the Probation Office's position
09:15:31 20 that the Sentencing Commission, under that two-level increase,
09:15:35 21 their intent was to increase the penalty for any offense that
09:15:40 22 occurred under (2)(a), that is evident by that, as opposed
09:15:44 23 to if the offense was, say, under the robbery Guidelines, that
09:15:49 24 increase would not apply.

09:15:50 25 So, any crime against a person which is covered

09:15:52 1 under the (2) (a) Guideline, the Sentencing Commission sought
09:15:55 2 to increase those penalties by a six-level increase. We would
09:15:59 3 have been remiss not to apply that because that is exactly
09:16:02 4 what --

09:16:02 5 THE COURT: The "person," and in this case was
09:16:04 6 the government official?

09:16:05 7 PROBATION OFFICER: Correct.

09:16:06 8 THE COURT: All right. Thank you.

09:16:07 9 Do you have any legal cause to show why judgment
09:16:11 10 should not now be pronounced?

09:16:13 11 MR. CAMERON: I do not, Your Honor. I would
09:16:15 12 just like to make two corrections.

09:16:16 13 The government has, and they have a right to do
09:16:18 14 this, argued to the Court that he hasn't shown any remorse.
09:16:22 15 Well, he's still in a situation as to decide whether or not
09:16:26 16 there will be any appeal in this case. So, I don't think that
09:16:29 17 it's incumbent upon him to do that at this time --

09:16:32 18 THE COURT: No, I understand that.

09:16:33 19 MR. CAMERON: -- even if he feels that.

09:16:34 20 THE COURT: I understand that. And I'm
09:16:35 21 certainly not holding that against him.

09:16:38 22 MR. CAMERON: The other point I was going to
09:16:39 23 make, Your Honor, is this has all been, thus far, mostly an
09:16:44 24 argument about the Guidelines. Our position, quite simply,
09:16:48 25 is that the Guidelines don't fit the unique circumstances of

09:16:51 1 this case. And we've articulated to the Court as to why we
09:16:55 2 feel that. There hasn't been a lot of response from the
09:16:58 3 government to that particular issue.

09:17:00 4 And we'll stand on our Sentencing Memorandum and
09:17:02 5 submit it. And there's no reason that I know of that he
09:17:05 6 shouldn't be sentenced.

09:17:07 7 THE COURT: All right. Hearing no reason, and
09:17:08 8 based upon the jury's verdict finding the defendant guilty
09:17:12 9 of Count One, a threat against the President of the United
09:17:15 10 States, a violation of Title 18 U.S. Code, Section 871(a),
09:17:19 11 the Court does now find the defendant guilty of that offense.

09:17:22 12 I've carefully considered the Presentence Report,
09:17:27 13 together with the Guidelines in this case. And first I'll
09:17:30 14 address the Guidelines, and then I'll discuss the factors
09:17:34 15 under 3553(a).

09:17:35 16 Under the Guidelines, the base offense level is
09:17:37 17 properly calculated at 12. There has been an objection to
09:17:44 18 the two-level, proposed two-level enhancement for multiple
09:17:49 19 threats. In this case, the Court finds that by a
09:17:53 20 preponderance of the evidence that there was a threat made
09:17:55 21 against the operator who answered the telephone. She
09:18:03 22 testified here. I observed her. I listened carefully to
09:18:07 23 what she had to say. And the language that was used was
09:18:10 24 clearly directed, at least in part, against her. And the
09:18:15 25 language that was used was clearly a threat against her. And

09:18:19 1 the record is quite clear about that.

09:18:21 2 In addition, he did make a threat against
09:18:27 3 Ms. Clinton. And he also, ultimately, made threats against
09:18:36 4 FBI agents and school children, all in the context of evidence
09:18:43 5 that the Court may consider in connection -- you may all be
09:18:46 6 seated. This is going to take a minute or two -- all in the
09:18:49 7 context of the facts surrounding this case.

09:18:54 8 He spoke, very shortly afterwards, with FBI agents
09:18:58 9 who came to investigate. He made telephone calls to the FBI
09:19:02 10 agents. He did make threats to the FBI agents. And that's
09:19:06 11 clearly documented in the evidence that's been presented to
09:19:10 12 the Court and, therefore, the Court finds that there were more
09:19:13 13 than two threats, which would count under the Guidelines in
09:19:18 14 terms of the two-level enhancement properly calculated by the
09:19:22 15 Department.

09:19:22 16 Under the victim-related adjustment, again, there
09:19:27 17 is no question that the President of the United States, an
09:19:30 18 employee of the United States, and the multiple threats that
09:19:35 19 were made, the Department has properly calculated that
09:19:39 20 there should be a six-level increase in connection with
09:19:43 21 the provisions under 3A1.2(b) and 3A1.2(a)(1) and (2) apply.
09:19:53 22 The victim was a government officer, employee, and the offense
09:19:55 23 of conviction was motivated by that statute. I mean, that's
09:19:59 24 clear from the language that was used. That was the basis on
09:20:03 25 which this call was made, at least there were two calls made

09:20:06 1 to the White House in connection with the threat that was
09:20:10 2 made, and specifically against the President, in which he
09:20:14 3 was found guilty by the jury in this case.

09:20:16 4 The difficult issue, the other difficult issue is
09:20:20 5 the one involving the obstruction of justice. While the Court
09:20:28 6 believes that it's a close question, I think, on balance,
09:20:32 7 the Court would conclude that the defendant did not obstruct
09:20:35 8 justice in this case. Virtually all of the answers that he
09:20:40 9 gave in connection with the testimony that he gave here was
09:20:43 10 that he didn't recall, and that may or may not be true. I
09:20:49 11 think it was a somewhat motivating factor in connection with
09:20:53 12 what the jury did in connection with their verdict, although
09:20:56 13 you have no way of knowing that for sure in connection with
09:20:58 14 the conviction and acquittal on the two different counts, one
09:21:02 15 conviction and the one acquittal.

09:21:04 16 There is no question in the Court's mind that the
09:21:08 17 defendant was under the influence of both drugs and alcohol
09:21:11 18 that severely impaired his functioning process at that time
09:21:15 19 and for some days after, including the days that he met with
09:21:19 20 the FBI agents.

09:21:20 21 There is no question when the Court looks at the
09:21:23 22 psychological evaluations and the records at the VA hospital
09:21:28 23 where he was admitted shortly after that, that he was
09:21:31 24 suffering from a fairly substantial mental disorder. It
09:21:35 25 doesn't mitigate against the crime that he committed here,

09:21:38 1 but it certainly is a factor that the Court takes into
09:21:40 2 consideration as to whether or not he was honest when he
09:21:44 3 said he didn't recall much about those telephone calls.

09:21:46 4 There was one section of the transcript that gave
09:21:51 5 the Court pause because he responded, "Yes, I am," in
09:21:56 6 connection with whether or not he is denying making the
09:22:00 7 threats. With respect to everything else he responded to,
09:22:02 8 it was that he didn't recall; he wasn't sure; had, at the
09:22:10 9 current time, no knowledge of the threats. And, there
09:22:13 10 certainly is fairly substantial evidence in the record
09:22:16 11 that would support a finding that he was severely impaired
09:22:19 12 at the time that he made these threats. Again, that doesn't
09:22:24 13 mitigate against the conviction in this case, but it satisfies
09:22:27 14 the Court that the two-level adjustment for obstruction of
09:22:31 15 justice should not apply in this case.

09:22:34 16 Based upon this, the adjusted offense level is 20.
09:22:37 17 Total offense level in this case is 20. And the defendant
09:22:39 18 falls in a category one under criminal history. He has no
09:22:43 19 prior criminal history that counts. And based upon that
09:22:46 20 finding, the Guideline range is 33 to 41 months.

09:22:51 21 Now, the Court has carefully examined the
09:22:55 22 provisions under 3553(a) of Title 18 of the United States
09:23:00 23 Code: The nature and circumstances of the offense; history
09:23:03 24 and characteristics of the defendant.

09:23:04 25 Now, there's no question in my mind that one of

09:23:09 1 the most serious offenses that can be committed in this
09:23:13 2 country is a true threat against the President of the United
09:23:19 3 States. There is absolutely no basis on granting any form
09:23:25 4 of leniency in connection with someone who makes a threat.
09:23:30 5 The jury found, and there is evidence to support the jury's
09:23:33 6 finding in this case that the defendant made a threat against
09:23:36 7 the President of the United States, and that each of the
09:23:39 8 elements of that crime were established beyond a reasonable
09:23:44 9 doubt and support the jury's verdict.

09:23:46 10 To reflect the seriousness of the offense and to
09:23:49 11 promote respect for the law and provide just punishment,
09:23:52 12 because of the seriousness of the offense, a period of
09:23:55 13 incarceration, in the opinion of the Court, is required in
09:23:58 14 this case. Hopefully, that will deter others similarly
09:24:03 15 situated who may think that they can do as the defendant
09:24:06 16 did here, and escape any type of consequences for it.
09:24:12 17 And, hopefully, this would deter the defendant from future
09:24:15 18 misconduct.

09:24:15 19 Also, to protect the public from further crimes of
09:24:18 20 the defendant, a period of incarceration is imperative in
09:24:24 21 this case. Hopefully, the defendant can receive the medical
09:24:27 22 care that he, I think, needs, during any period that he's
09:24:31 23 incarcerated. He's already been incarcerated almost, I
09:24:35 24 believe it's close to a year now. And, hopefully, he can
09:24:40 25 receive, in the federal institution, the type of medical

09:24:46 1 care that he needs. And that's an important condition in
09:24:51 2 connection with supervised release in this case.

09:24:52 3 For all of these reasons, the Court believes that
09:24:54 4 a sentence within the Guideline range as determined by the
09:24:57 5 Court, which is 33 to 41 months, is appropriate.

09:25:00 6 It will be the order and judgment of the Court
09:25:02 7 that the defendant is committed to the custody of the Bureau
09:25:06 8 of Prisons for a term of three years, which is 36 months.

09:25:09 9 No fine is imposed. The defendant does not have
09:25:11 10 the ability to pay a fine.

09:25:13 11 The mandatory penalty assessment of \$100 is imposed
09:25:16 12 and will be due and payable immediately.

09:25:18 13 The defendant is placed on supervised release upon
09:25:24 14 his release from custody for a term of three years. You will
09:25:27 15 comply with the standard conditions of supervision recommended
09:25:30 16 by the Sentencing Commission.

09:25:32 17 And if you could provide a copy of those conditions
09:25:35 18 to the defendant.

09:25:35 19 (Document given to the defendant.)

09:25:41 20 THE COURT: Do you acknowledge receipt of a copy
09:25:42 21 of those?

09:25:43 22 MR. CAMERON: We do, Your Honor.

09:25:44 23 THE COURT: In addition, the defendant will be
09:25:46 24 subject to the following mandatory conditions:

09:25:48 25 You'll not commit another federal, state, or local

09:25:51 1 crime during the period of supervised release.

09:25:55 2 You'll not have in your possession any type of
09:26:00 3 controlled substance or any form of alcohol. You must refrain
09:26:04 4 from the unlawful use of a controlled substance and submit to
09:26:07 5 one drug test within 15 days of release from imprisonment, and
09:26:11 6 at least two periodic drug tests thereafter as determined by
09:26:15 7 the Court, not to exceed 104 drug tests annually.

09:26:19 8 And that's an important condition here. I'm
09:26:21 9 absolutely satisfied that you wouldn't be sitting in front
09:26:24 10 of this court if you hadn't been using drugs and alcohol.
09:26:29 11 And, you know, if on supervised release, if you come back
09:26:33 12 before this court and you're on drugs or you're on alcohol,
09:26:37 13 that's going to be a straight line to going back into custody
09:26:43 14 because that, I think, is what precipitated everything that
09:26:46 15 occurred here.

09:26:47 16 You must cooperate in the collection of DNA as
09:26:50 17 directed by the Probation Office.

09:26:51 18 You must pay any assessment -- well, I'm not going
09:26:54 19 to impose an assessment. You don't have the ability to pay.

09:26:58 20 And I might add in this sentence that I've imposed,
09:27:02 21 which is within the Guideline range, but not at the highest
09:27:07 22 end, I've taken into consideration your services to the United
09:27:10 23 States. I've taken into consideration the mental state that
09:27:15 24 you've suffered as a result of your services to the United
09:27:19 25 States, and that was a mitigating factor that the Court has

09:27:22 1 considered.

09:27:22 2 The Court also will impose the following special
09:27:25 3 conditions:

09:27:25 4 You'll not have contact, directly or indirectly,
09:27:29 5 with any victim or witness in the instant offense unless under
09:27:33 6 the supervision of the Probation Office.

09:27:36 7 Importantly, you'll participate in and successfully
09:27:38 8 complete a mental health treatment program that would include
09:27:43 9 testing, evaluation, outpatient counseling, as approved and
09:27:47 10 directed by the Probation Office.

09:27:48 11 You'll refrain from the use and possession of any
09:27:50 12 type of alcohol.

09:27:51 13 And you'll participate, as I indicated, in that
09:27:55 14 mental health treatment. You'll be required to contribute to
09:27:59 15 the costs. And, again, that's based on your ability to pay.
09:28:02 16 And you, quite clearly, do not have the ability to pay.

09:28:06 17 You'll also not possess or have under your control
09:28:08 18 or have access to any firearms, explosive devices, or other
09:28:13 19 dangerous weapons as defined by federal, state, or local law.

09:28:15 20 And I might indicate in here there wasn't any
09:28:17 21 evidence in this case that the defendant had any ability to
09:28:20 22 carry out any threat that he made, and that's an important
09:28:23 23 factor that the Court considered in deciding whether or not
09:28:27 24 the sentence that I'm imposing is an appropriate sentence.
09:28:32 25 Had the defendant had the ability to carry out the threat,

09:28:35 1 had he had weapons at his disposal, something of that nature,
09:28:40 2 or proximity, the sentence would have been substantially
09:28:45 3 different than this was. And, I'm sure the recommendations
09:28:47 4 would have been different than they were.

09:28:49 5 You will use your true name at all times. You
09:28:51 6 will be prohibited from the use of any aliases, false dates
09:28:52 7 of birth, social security numbers, or any other pertinent
09:28:56 8 demographic information.

09:28:57 9 You'll also submit to search of your person,
09:29:00 10 property, residence, or automobile under your control by the
09:29:02 11 Probation Officer, or any other authorized person under the
09:29:05 12 immediate and personal supervision of the Probation Officer,
09:29:08 13 without a search warrant, to ensure compliance with conditions
09:29:11 14 of release.

09:29:12 15 And I have to say that, again, on supervised
09:29:16 16 release, if the officers come out to conduct a search, you
09:29:18 17 have to let them conduct the search. And if you obstruct
09:29:22 18 them, you're going to be back in this courtroom and you're
09:29:25 19 going to be going back to prison. It's as simple as that.

09:29:27 20 You'll also participate in and successfully complete
09:29:30 21 a substance abuse treatment program. And that's extremely
09:29:33 22 important. That would include drug and alcohol testing,
09:29:36 23 outpatient counseling as approved and directed by the
09:29:39 24 Probation Office. And if you have the ability to pay, you
09:29:43 25 would contribute to the cost.

09:29:45 1 And, you'll refrain from the use of any type of
09:29:47 2 alcohol, as I've indicated.

09:29:48 3 I think as long as you take medication, as long
09:29:52 4 as you continue to, once you're released and under supervised
09:29:57 5 release have contact with the Veterans Administration
09:30:00 6 Hospital, and take the medication that they prescribed for
09:30:03 7 you, I would anticipate that you're not going to be in trouble
09:30:07 8 again.

09:30:08 9 On the other hand, if you don't, there may well
09:30:10 10 be a basis for violation at some of future time. And if that
09:30:14 11 happens, the Court will have very few options other than to
09:30:20 12 put you back in custody. So, that's where we are.

09:30:22 13 I would advise the defendant that you have the
09:30:24 14 right to file a Notice of Appeal in connection with this
09:30:28 15 judgment of the Court. That would have to be filed in
09:30:32 16 writing within 14 days of today's date. I'll go ahead and
09:30:36 17 appoint Mr. Cameron, if he accepts the appointment, to
09:30:39 18 represent you up until that 14-day period, at least, to
09:30:43 19 determine whether or not you want to file that Notice of
09:30:45 20 Appeal. And if you do file a Notice of Appeal, then
09:30:50 21 Mr. Cameron would be appointed, if he accepts the
09:30:53 22 appointment --

09:30:53 23 MR. CAMERON: Your Honor, in that regard, I
09:30:55 24 would be happy to file any Notice of Appeal if he decides
09:30:59 25 there is going to be an appeal.

09:31:00 1 THE COURT: All right.

09:31:00 2 MR. CAMERON: I don't feel that I would be the
09:31:03 3 person that should go forward on this appeal. I've tried it.
09:31:08 4 I've given it every effort I have. I don't have a lot of
09:31:10 5 disagreement with the Court's rulings in this case. It might
09:31:13 6 be safer to have somebody with a new set of eyes take a look
09:31:17 7 at it.

09:31:17 8 THE COURT: Yeah, that's fine then. I'm going
09:31:19 9 to appoint you to at least remain on as attorney for the
09:31:25 10 defendant for purposes of filing any Notice of Appeal, if
09:31:28 11 he elects to do that. If a Notice of Appeal is filed, then
09:31:32 12 I will immediately refer this to the Clerk's Office for the
09:31:37 13 appointment of new counsel from the CJA panel.

09:31:41 14 MR. CAMERON: Thank you, Your Honor. I
09:31:42 15 appreciate that.

09:31:42 16 THE COURT: They would handle the appellate
09:31:44 17 aspect of it.

09:31:44 18 All right. That's fine. I think that's all I have.
09:31:46 19 Anything else on behalf of the government?

09:31:48 20 MR. SULLIVAN: No, Your Honor.

09:31:48 21 THE COURT: Anything from the defendant?

09:31:49 22 MR. CAMERON: Your Honor, if I could have the
09:31:50 23 Court's indulgence one second.

09:31:50 24 (Counsel and defendant confer.)

09:32:13 25 MR. CAMERON: Your Honor, just two things I

09:32:14 1 would like to ask the Court for. He's not been convicted of
09:32:19 2 a drug crime, but I think as the Court pointed out, drug use
09:32:22 3 has a significant impact on why this crime took place. So, I
09:32:26 4 would ask for a recommendation to the RDAP Program while he's
09:32:30 5 incarcerated.

09:32:31 6 THE COURT: That will be the strong
09:32:32 7 recommendation of the Court. Of course, the Department is
09:32:34 8 going to make that determination independent of anything I
09:32:37 9 say, but I would make that strong recommendation.

09:32:40 10 MR. CAMERON: Additionally, Your Honor, we
09:32:42 11 would like to look at a placement somewhere in Phoenix.

09:32:45 12 DEFENDANT FORD: Or a camp, some place like a
09:32:48 13 camp.

09:32:48 14 MR. CAMERON: Well, they make that
09:32:50 15 determination --

09:32:50 16 THE COURT: Yes. I would make that
09:32:51 17 recommendation that he be placed in a facility in Arizona --
09:32:55 18 is that what you're asking, in the Phoenix area?

09:32:57 19 DEFENDANT FORD: No, I mean, I guess Washington
09:32:59 20 State.

09:32:59 21 MR. CAMERON: Okay.

09:33:00 22 DEFENDANT FORD: I have no idea where the places
09:33:02 23 are at.

09:33:03 24 MR. CAMERON: Your Honor, he wants something --
09:33:05 25 let's say Washington. I don't think he understands that,

09:33:08 1 exactly, his determinations as to when he goes to camp, when
09:33:11 2 he's eligible -- and I think he is eligible -- are all made
09:33:16 3 by the Bureau of Prisons, so that will be down the line and a
09:33:19 4 decision this court doesn't get to make. But, they'll make it
09:33:20 5 based on the conviction.

09:33:21 6 DEFENDANT FORD: Okay.

09:33:22 7 THE COURT: So I'll make the recommendation that
09:33:25 8 if he's eligible, that he be in the RDAP Program.

09:33:29 9 MR. CAMERON: Thank you, Your Honor.

09:33:30 10 THE CLERK: And Washington State or --

09:33:31 11 THE COURT: Well, I don't think -- I don't think
09:33:33 12 that's really what he wants. He wants some type of --

09:33:36 13 DEFENDANT FORD: Washington State. I --

09:33:38 14 THE COURT: I have no problem recommending
09:33:41 15 something in the State of Washington.

09:33:42 16 DEFENDANT FORD: All right.

09:33:43 17 THE COURT: All right. Thank you.

09:33:44 18

19 (Court Adjourned.)

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I certify that the foregoing is a correct
transcript from the record of proceedings
in the above-entitled matter.

\s\ Kathryn M. French

March 27, 2017

KATHRYN M. FRENCH, RPR, CCR
Official Reporter

DATE